



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/941,151

08/28/2001

Eric Chapoulaud

ORM-156CO

4585

26875 7590 03/01/2010
WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

EXAMINER

EIDE, HEIDI MARIE

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

03/01/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/941,151	Applicant(s) CHAPOULAUD ET AL.	
	Examiner HEIDI M. EIDE	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 120-132 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 120-132 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 120-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chishti et al. (5,975,893) in view of Lehmann et al. (6,575,751).
2. Chishti et al. discloses a method of providing a custom orthodontic appliance for repositioning teeth of a patient comprising providing for display on a computer screen, with interaction by an operator (user), data of images of the teeth of the patient in suggested post-treatment tooth positions and orientations (final digital data set) based on three-dimensional information of the shapes of the teeth (column 5 line 37), receiving feedback information from a person (treating professional), other than the operator, and providing a custom orthodontic appliance configured to reposition teeth based on the suggested post treatment tooth positions and orientations. It is noted that the interactive step is written in the past tense, and interactivity can be interpreted as with the computer system. Furthermore, there is suggestion as to various times when "users" can provide feedback as in information to modify (change) or accept (not change) tooth positions and orientations in obtaining post-treatment tooth positions and orientations (columns 4-7, 9- 14). However, Lehmann et al. is used to teach a situation in which the

Art Unit: 3732

person, treating professional, or orthodontic practitioner (dentist) does not have access to the computerized site and uses the services of another such as that of the operator, user, or laboratory, and interactivity is present in the method of providing a custom dental appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the person who has interactively viewed a display of the images as understood as in Lehmann et al. in order to enable the person to save time and effort in communicating with the laboratory operator in view of Lehmann et al. As changes are incorporated, it is redisplayed.

3. Claims 120-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chishti et al. (5,975,893) (Chishti) in view of Hultgren 6,217,334 further in view of Peltz 6,205,716.

4. Chishti teaches a method of providing a custom orthodontic appliance for repositioning teeth of a patient comprising providing for display on a computer screen (col. 5, ll. 49-51) with interaction by an operator (user), data of images of the teeth of the patient in suggested post-treatment tooth positions and orientations (final digital data set) based on three-dimensional information of the shapes of the teeth (col. 5 ll. 49-64), receiving feedback information from a treating professional providing revised images of the teeth (col. 14, ll. 24-34 and providing custom appliances based of the feedback (fig. 7, col. 14, ll. 35-37). The feedback received from the treating professional, such as approval or suggestions would have been obvious information to provide during an orthodontic consultation. Chishti does not specifically state if the person who delivered the feedback is different from the operator.

Art Unit: 3732

5. Hultgren teaches digitizing tooth models, creating a positive image and producing them by remote transmission to a consulting dentist (col. 7, ll. 40-56). The step of providing by remote transmission obviously teaches that the operator doing the scanning is a different person than the dentist, as such, it would have been obvious to one having ordinary skill in the art to modify the method taught by Chishti with the step of remotely transmitting the dental models taught by Hultgren in order to provide more accurate digital images at a remote lab. Chishti/Hultgren teaches the invention as substantially claimed and discussed above, however, does not specifically teach the interaction with the operator and receiving the feedback is interactive.

6. Peltz teaches an interaction communication between a user and a medical professional (abstract, col. 1, ll. 34-43, 47-50, col. 2, ll. 5-10, col. 7, ll. 52-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method taught by Chishti/Hultgren with the step of interaction between two people taught by Peltz to receive immediate feedback from a specialist.

Response to Arguments

Applicant's arguments filed December 30, 2009 have been fully considered but they are not persuasive. Applicant argues regarding affidavit filed April 21, 2009 that exhibits U and V provide support for the limitation of providing feedback information on the treatment position from a person other than the operator. However, in each of the above mentioned exhibits various points are illustrated. While the exhibits are labeled as Eric's Pick and Craig's pick's, there is no evidence showing that feedback is provided on the first image by someone other than the operator to create the second image. The

exhibits are screen shots and show no interaction between the two different screen shots. As mentioned in the previous office action, evidence must be submitted, not just a statement that something happened. Sufficient evidence showing providing feedback information on the treatment positions from a person other than the operator is not provided and therefore the rejection involving the prior art of Lehmann is maintained.

Applicant further argues that the prior art of Peltz does not provide any connection to the dental technology and providing feedback from one physician or technician to another on a dental prescription. However, the prior art of Peltz is used to teach interactive feedback. The limitations regarding the dental prescription are taught by Chishti and Hultgren as discussed in the previous rejection and above. Peltz is related to an invention providing interactive feedback in a medical environment, which encompasses a dental environment. As mentioned in the previous rejection and above, it would have been obvious to one having ordinary skill in the art to modify the method taught by Chishti/Hultgren with the step of providing interactive feedback in order to receive immediate feedback from a specialist.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3732

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heidi Eide
Examiner
Art Unit 3732

/Heidi M Eide/
Examiner, Art Unit 3732

2/25/2010

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732